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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,631	04/11/2001	Robert K. Rowe	1023.1123101	1809

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EXAMINER

CURTIS, CRAIG

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 01/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,631

Applicant(s)

ROWE et al.

Examiner

Craig Curtis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 21, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above, claim(s) 8, 10, 12, 17, 20-28, 36, 41, 44-52, and 54-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 11, 13-16, 18, 19, 29-35, 37-40, 42, 43, and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5, 6, 8 6) ☐ Other:

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DETAILED ACTION

Disposition of the Instant Application

- This Office action is responsive to Applicants' Response to Restriction Requirement received on 21 October 2002 and made of record in the file, as Paper No. 9, on 28 October 2002.
- In said Response, Applicant elected without traverse to prosecute Species I, corresponding to Figure 2, claims 1-7, 9, 11, 13-16, 18, 19, 29-35, 37-40, 42, 43, and 53 reading thereon. Thus, in accordance with 37 CFR 1.142(b), claims 8, 10, 12, 17, 20-28, 36, 41, 44-52, and 54-62 are hereby withdrawn from further consideration by the examiner as being drawn to non-elected inventions.
- The Examiner agrees with Applicants' assertion that independent claims 1, 29, and 53 are generic. Should any of these claims be deemed allowable, prosecution of the non-elected claims depending therefrom will indeed be performed.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7, 9, 11, 13-16, 18, 19, 29-35, 37-40, 42, 43, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (5,422,483) in view of Nobuya (JP 2001 21489).

Ando et al. disclose the instant invention as claimed--a spectrometer system for performing spectroscopic determination on biological media, the spectrometer system comprising:

a light source for generating light (See Fig. 1, 1b);

an optical filter (4) positioned to receive light from said light source, said optical filter comprising a circular variable filter (a linear variable filter being an obvious, well-known alternative to same);

a sampler (See Fig. 1) for transmitting the light into the sample and for receiving the non-absorbed light from the sample (17); and

a detector (See Fig. 5) for receiving said non-absorbed light and for generating an electric signal indicative of the non-absorbed light.

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further comprising an optical integrating chamber (Fig. 1, integrating sphere 6) wherein light reflected from an optical filter is substantially directed into the chamber and then reflected back to said optical filter (inevitable, to however small a degree);

wherein said spectrometer system has a signal-to-noise ratio (inherent), and wherein said integrating chamber increases said signal-to-noise ratio (also inherent);

wherein said integrating chamber allows direct illumination of the filter from the light source (See Fig. 1);

wherein said integrating chamber is an orthogonal design to preserve angular qualities of the light entering said integrating chamber (See Fig. 1);

wherein said sampler is disposed adjacent to said detector (See Figs. 2, 5);

wherein said optical filter is disposed adjacent said light source (See Fig. 1)--**EXCEPT FOR** explicit teachings of the following claimed limitations:

wherein said optical filter has a plurality of bandpass regions, wherein light within a bandpass region is transmitted through said filter;

wherein said optical filter comprises one or more dielectric bandpass filters;

wherein said optical filter comprises a non-linear variable filter;

wherein said optical filter comprises a plurality of individual bandpass filters;

wherein said optical filter comprises a

an optical encoding unit positioned for encoding selected frequencies of light passing through said optical filter, wherein said optical encoding unit comprises a spatial light modulator.

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However, Nobuya provides a teaching of an optical filter (Fig. 1, F) that has a plurality of bandpass regions, wherein light within a bandpass region is transmitted through said filter; wherein said optical filter comprises one or more dielectric bandpass filters (See abstract; otherwise, inherent) wherein said optical filter has a plurality of bandpass regions (Id.); wherein light within a bandpass region is transmitted through said optical filter.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Ando et al. such that it comprise an optical filter having a plurality of bandpass regions, wherein light within a bandpass region is transmitted through said filter; wherein said optical filter comprise one or more dielectric bandpass filters; wherein said optical filter has a plurality of bandpass regions, and wherein light within a bandpass region is transmitted through said optical filter, as taught by Nobuya, for at least the purpose of increasing the utility of said spectrometer system as an analyzing instrument.

With regard to Ando et al.'s lack of teaching of an optical encoding unit positioned for encoding selected frequencies of light passing through said optical filter, wherein said optical encoding unit comprises a spatial light modulator, it is noted as being notoriously old and well-known to use optical encoding units to encode selected frequencies of light passing through optical filters, and it is submitted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Ando et al. such that it further comprise such an optical encoding unit, for at least the purpose of altering (read: encoding), to a desired

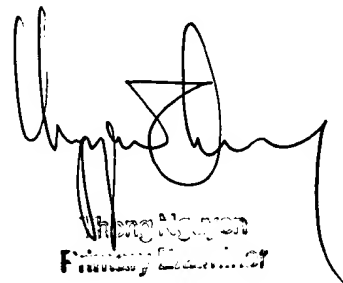
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degree, frequencies of light passing through said optical filter, such that said sample be exposed to a desired frequency spectrum.

Contact Information

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Curtis, whose telephone number is (703) 305-0776. The facsimile phone number for Art Unit 2872 is (703) 308-7721.

Any inquiry of a general nature regarding to status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0956.



Handwritten signature of Craig H. Curtis, with a stamp below it that reads "Craig H. Curtis" and "Patent Examiner".

Craig H. Curtis
Craig H. Curtis
Group Art Unit 2872
27 December 2002